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This article reports the vicissitudes of the agencies and personnel in the Department of Health, Education, and Welfare (HEW) authorized to enforce school desegregation as stipulated in the Civil Rights Act of 1964. The shifts in responsibilities and the efforts to consolidate enforcement into one office were the result of Congressional actions and appropriations. The conflicts within HEW and between it and Congress are related, with special attention given to the activities of Peter Libassi, special HEW assistant for civil rights, to the attitud s and roles of Southern Congressmen, and to the status of desegregation in the Southern and border states. Under the leadership of Libassi the approach to urban school desegregation will probably be on a case-by-case basis. HEW is now required to uniformly enforce desegregation guidelines in both the North and the South, and Libassi is attempting to survey the de facto segregation situation in the North before he begins enforcement there. Also discussed in this article are the organization, staffing, and operational aspects of nine regional enforcement offices. (NH)

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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THE NEW LOOK IN CIVIL RIGHTS ENFORCEMENT

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By William Steif

The focus of the struggle to enforce the Civil Rights Act of 1964 has shifted to Room 5069 in the Independence Avenue headquarters of the Health, Education and Welfare (HEW) Department in Washington.

Room 5069 is much like the other executive offices off the carpeted corridors of the block-long building. The room is perhaps 25 by 25 feet, and is furnished in typical high-bureaucrat style—leather sofa, a philodendron, solid work table and desk, and the GI carafe that is the insignia of the federal official who has it made.

But Peter Libassi, the room's occupant, doesn't have it made, and he knows it. Libassi is HEW Secretary John W. Gardner's special assistant for civil rights. He is also director of HEW's Office of Civil Rights. In both jobs he reports directly to only two men at HEW, Gardner and Under Secretary Wilbur Cohen.

This represents a significant change in responsibility for civil rights enforcement. Until May 10, Libassi was only a policy man on civil rights. He had no direct enforcement responsibility. He was not on the federal firing line. Now that has all changed.

The responsibility had been with HEW's operating agencies. Separate offices of "equal opportunity" had been scattered among the Office of Education, Public Health Service and Welfare Administration. The secretariat, Gardner's Cabinet-level shop where Libassi was the civil rights specialist, dealt in the exotica of the federal government's executive branch—relations with Congress, new legislation, policy.

But when it came to the nuts and bolts of civil rights enforcement, such as the head-to-head confrontations with irate school boards, the operating agencies took over.

In the Office of Education, which faced the strongest pressures, Commissioner Harold Howe II had delegated the enforcement responsibility to David S. Seeley, a 36-year-old lawyer whose $20,000-a-year job carried the title of Assistant Commissioner. Seeley's third-floor office in a remodeled General Services Administration building was only three blocks from Gardner's fifth-floor headquarters, but in terms of the federal bureaucracy it was a long way off.

All that changed publicly late on the afternoon of May 10. Gardner convened what has since been called "the most exclusive press conference" ever held in Washington. He announced to five reporters that civil rights enforcement responsibilities henceforth would be lodged in his office, under Libassi's direct charge.

The suspected hope of Gardner's public-information man, Hal Levy, was that the media would soft-pedal this news as being no substantive shift. Some newsmen say Levy summoned only reporters he thought would not ask harsh questions of Gardner. (Levy the next day said "we didn't have time" to call any other reporters or media.)

Actually, the change had been in the works a year. HEW had defied the will of Congress that long. Libassi admits as much today. Gardner, Cohen, Howe, Libassi, Seeley and nearly everyone else involved in civil rights enforcement wanted to continue the enforcement system that had grown up since passage of the law in 1964. At least two learned studies by HEW advocated the system's continuation.

The rationale was that the operating agencies' officials could deal better with their local counterparts. There was also considerable feeling that the Office of Education, for instance, could exert more direct fiscal leverage on a school district than the secretariat.

But Congress had greased the skids under HEW. On May 4, 1966, Rep. John Fogarty (D-R.I.), the veteran chairman of the House appropriations subcommittee, told the House that HEW's spending for civil rights activities was "budgeted a great many different places in the department. The committee deleted these every place they occurred and has consolidated all funds in the office of the secretary. The committee

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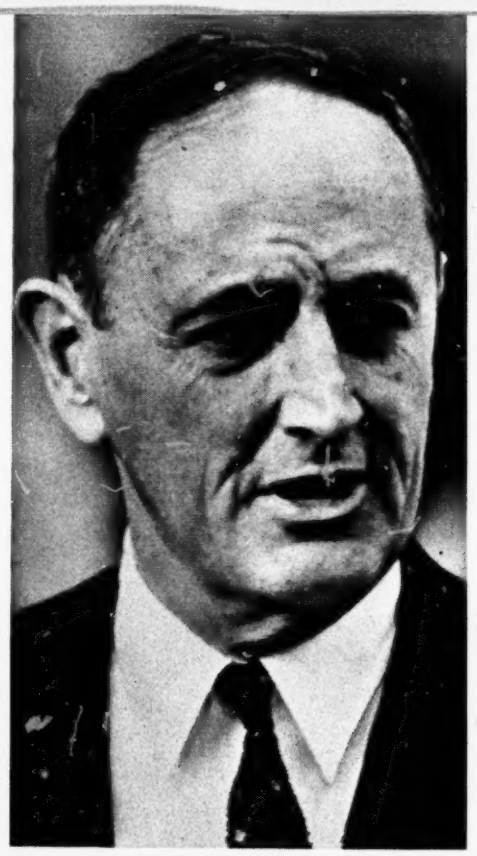
believes that this will provide for a much more efficient and effective program . . . I recognize that a period of transition and experimentation will be necessary. A major part of the department's civil rights effort must be carried out through the regional offices, so the secretary should have some discretion and flexibility in allocating civil rights personnel to regional offices."

In those few sentences, Fogarty told HEW the score. The congressional report on HEW appropriations for fiscal year 1967 was more specific. "In the opinion of the committee," the report said, "this work can be accomplished more effectively and efficiently by having one office responsible." A total of $3,385,000 for 278 jobs was made available. The committee added: "Since the secretary has a special assistant (Libassi) in charge of these activities, this seems the proper place for such centralization."

"OK, Fella, Where's the Fire?

THE KANSAS CITY STAR



John Gardner
Secretary of HEW

Peter Libassi
New Civil Rights Chief

David Seeley
Howe's Assistant—Resigned

But nothing happened. Late in 1966, Fogarty and his subcommittee's ranking Republican, Rep. Melvin Laird (Wis.), met with HEW officials and again urged both centralization of responsibility in the secretary's office and regionalization from the central office. Fogarty died as the 90th Congress met in early January. It was many weeks before the new subcommittee chairman, Rep. Daniel Flood (D-Pa.), was picked and the subcommittee reorganized.

When Flood began hearings on HEW's appropriations, the subcommittee got lots of testimony from Southern congressmen about what the Southerners construed as misenforcement of the Civil Rights Act and, especially, of the school desegregation guidelines. In mid-April, at a closed hearing, Flood's subcommittee raked Cohen, Libassi and other HEW staffers over the coals for not carrying out the instructions of Congress. Flood followed on April 27 with a letter to Gardner saying that "members of the subcommittee are seriously concerned with certain of the contentions made by outside witnesses about the department's approach to enforcement . . . and are particularly disturbed that the department was not fully responsive to the committee report last year calling for complete centralization of the civil rights enforcement staff."

Flood sought "clarification" on three matters:

- Were the school desegregation guidelines "directed exclusively at the Southern states and not at similar practices in the North?"
- Had the Office of Education "gone beyond the intent of the law" by "requiring racial balance, expressly prohibited by the very terms of the Civil Rights Act?"
- When was Gardner going to remedy his "failure" to centralize civil rights enforcement activities?

Flood reminded Gardner that when the secretary delivered his "views and plans," they would "assist the subcommittee in its consideration of the 1968 budget" —in short, do it our way or prepare for big cuts in funds.

On May 9, Gardner surrendered. He wrote Flood that Title VI of the Civil Rights Act "applies to the entire country, not to any one region"; that "we will continue to adhere faithfully to the statutory prohibition against requiring racial balance," as the courts interpret it; and that "a groundwork" for centralization had been laid and "we are prepared to make the additional changes necessary to accomplish the reorganization recommended by the committee."

Gardner added that instead of enforcement being distributed among various agencies, all Title VI responsibilities would come to his office and "review of decisions of hearing examiners" probably would be assigned to "an administrative tribunal."

The Flood subcommittee hearing and Flood's follow-up letter came at a time of stress for Seeley. New York Mayor John Lindsay wanted him to make up his mind on a job offer. Seeley was being sought for the $30,000-a-year post of director of educational liaison in New York City. Gardner's inevitable response to the congressional pressure could only mean a demotion for Seeley. Instead of being the top civil rights enforcer, Seeley would be at best number three behind Libassi and Libassi's deputy, Derrick Bell, a 37-year-old lawyer formerly with the NAACP Legal Defense and Educational Fund.

Seeley and Libassi had not seen eye to eye on several occasions. Libassi thought Seeley sometimes was too abrasive. Seeley thought Libassi was too busy soothing politicians. It was said that Seeley failed to delegate authority sufficiently and got into political hot water. Moreover, the word was that Seeley had lost his zest for a tough job. He was weary.

On May 1, Seeley announced his resignation, making it easier for Gardner to shift the school desegregation burden directly to Libassi 10 days later.

Yet, Seeley and Libassi respect each other. "Libassi's style is different from mine," Seeley says, "but

neither of us sets the policy and I don't think there'll be any change. I don't have any great forebodings. It's hard to imagine a policy more conservative than it is."

Libassi praises Seeley's performance. He points out that Seeley, as a young aide to then-Commissioner Francis Keppel, started from scratch in July, 1964, with only the Civil Rights Act as a guide. The law itself represented compromises and contains ambiguities.

But Title VI says: "No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

Primarily on the basis of that sentence, Seeley devised and built a system for carrying out school desegregation (it later carried over to desegregating 7,000 hospitals and 5,000 nursing homes, too). Five months after passage of the law, regulations putting Title VI into effect were issued, and on New Year's Eve, 1964, the Office of Education began mailing instructions and compliance forms to more than 25,000 school districts and state education agencies, and to more than 2,600 institutions of higher education. It wasn't until Jan. 3, 1965, that the Office of Equal Educational Opportunity was created and Seeley became its acting chief.

As Southern consternation rose, it became evident that some general policy directions would be needed. The first set of guidelines was issued on April 29, 1965, prescribing minimum standards that Southern school districts had to meet to be eligible for federal aid. From those relatively gentle guidelines developed the set issued for the fall of 1966 and essentially still in force.

Libassi, looking back, notes that "all but about 35 Southern school districts prepared" desegregation plans. "Nearly all began student desegregation in 1966," he says, "and about half began faculty desegregation the same year." He points to the increases in the percentages of Negro youngsters going to school with white youngsters in the South as evidence of Seeley's impressive work. The total went from less than 3 per cent in the fall of 1964 to about 16 per cent in the fall of 1966, according to the federal count.

There "aren't a dozen districts in the whole South" that haven't been affected by Seeley's work, Libassi says. "In many places—not all—once this gets started, its own momentum carries it. It isn't necessary for the federal government to take every child by the hand."

He feels that September, 1967, will be "a true test" of Southern desegregation. Libassi says "you're going to see an increase in faculty desegregation throughout the South that will surprise you. The program in the South has accomplished a great deal." Indeed, the "goal" of Libassi's office for the fall of 1967 is to achieve 25 per cent desegregation—that is, to have a quarter of the South's three million Negro grade- and high-school pupils attending school with whites. Preliminary indications are that the actual figure will fall between 18 and 21 per cent.

Libassi stresses that the South has "received preferential treatment. The courts allowed no Northern gradualism." Only the 17 Southern and border states that "needed time to comply" in order to desegregate their dual school systems got this treatment.

In 1964, he says, "the focus was on the South. But now the focus has shifted to the North, a difficult and different problem. Our progress in the North has not been adequate. Our efforts have been minimal. Title VI covers the North, too."

At HEW, there is no doubt that the next big civil rights push will come in the schools of the urban North. To be more precise, one of Libassi's top aides says the push will be urban and suburban, "North or South doesn't matter." This aide cites HEW's summer tussle with Georgia's Fulton County, a suburban area of Atlanta, as the tipoff on the next civil rights struggle. The Fulton County fight basically is over *de facto* segregation—only 12 per cent of the school population is Negro—and Libassi perhaps would have been happier if Seeley's office hadn't stumbled into the problem. But there are contentions that the county has a great deal of purposeful segregation too, and the office moved into the matter promptly and won an acceptable desegregation plan from the county.

Indeed, caution may be Libassi's key difference in "style" from Seeley. The urban desegregation push, therefore, could be rather cautious. No one at HEW has forgotten that Mayor Richard Daley reversed Keppel's effort to withhold funds from Chicago within a 72-hour period of September, 1965, or that Keppel soon afterward was eased up, and out.

The present thinking in Libassi's office is to approach urban desegregation in much the same case-by-case way that the NAACP built up to the *Brown* case of 1954. That means tackling *de facto* segregation in smaller communities first; one example often cited is Manhasset, N. Y. It also means tackling faculty segregation even where there are few Negro pupils. ▶

The federal government won't order busing, for instance, says Libassi. But in the next six to nine months his office will examine zoning plans, teacher assignment policies and distribution of funds and equipment to white and Negro schools to see if Northern education officials tend to reinforce school segregation resulting from housing patterns.

Thus, Libassi's office will deal with far more than dual school systems. The amendment that Rep. Edith Green (D-Ore.) tacked onto the Elementary-Secondary Education Act in the House reinforces Libassi on this score. It requires uniform enforcement of desegregation guidelines, North and South.

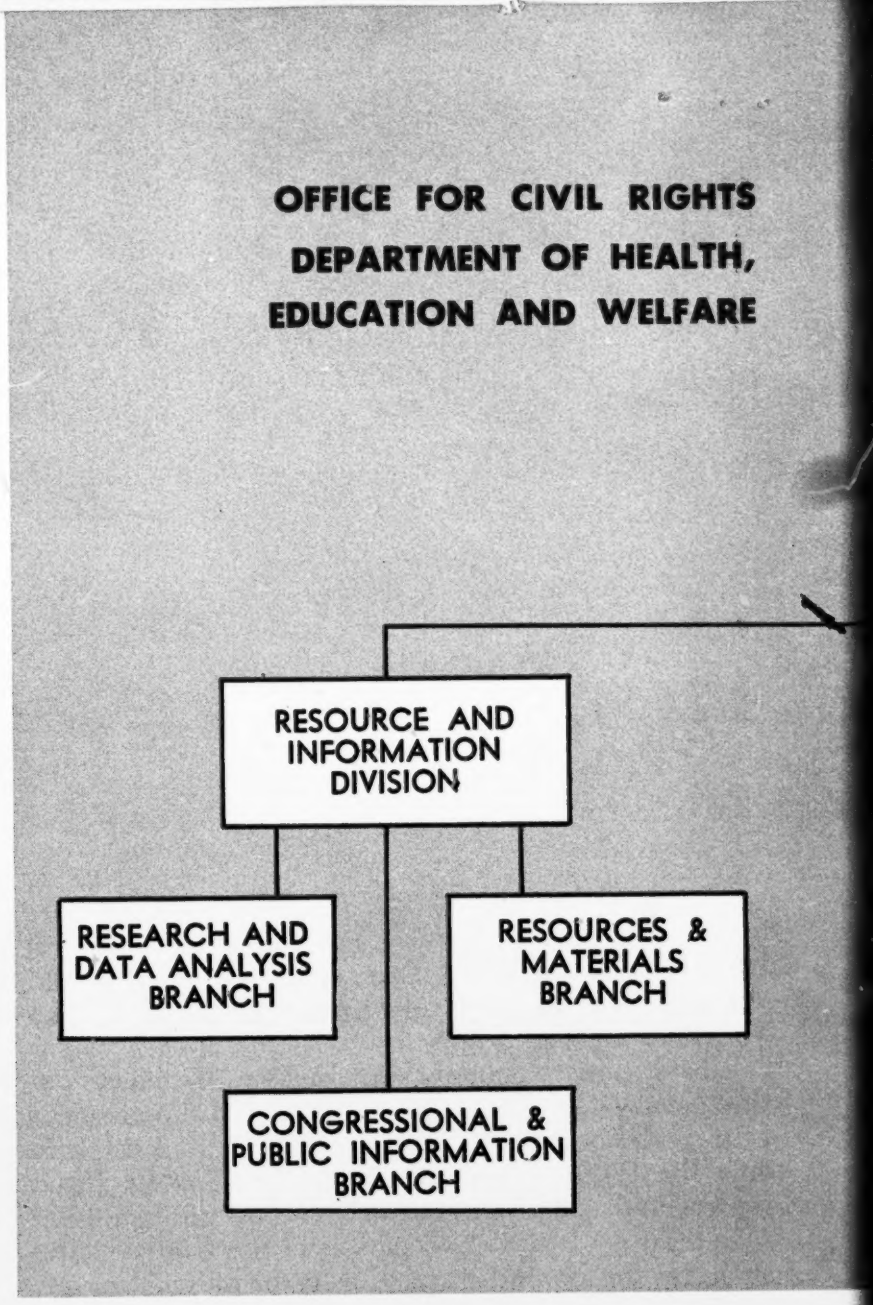
Libassi wrote a letter for Gardner's signature opposing the Green Amendment the morning of the day the amendment passed the House last May. Libassi now says that "Southern support" for the amendment scared HEW, and that "the amendment does not have the effect it was rumored to have." The rumor was that it would have forced HEW to accept neighborhood schools and freedom-of-choice desegregation plans in all instances.

Libassi now believes that the Green Amendment "requires the department to develop a statement of policies applicable to the North," at least so far as *de jure* ("by law") segregation is concerned. He also considers it "a mandate that Congress wants something done in the North." He has no doubt the Senate will accept it.

A *de facto* segregation committee that Howe started could assist Libassi, though it has been dormant a year. A section of Seeley's office run by Theron Johnson quietly has investigated school segregation in more than 30 cities, mostly in the North, in addition to the well-publicized inquiries in Chicago, Boston, San Francisco and Chester, Pa. Congress in the current year seems intent on raising Libassi's total budget to about $4.5 million, which will mean he can hire 65 more people above his present 278 limit. He says most of the 65 will work on Northern segregation.

Libassi believes last winter's report by the Commission on Civil Rights on racial isolation will be useful to him in enforcing the law in the North. Also useful, he adds, will be Federal Judge J. Skelly Wright's June decision on *de facto* segregation in the District of Columbia, which he thinks "may become the main stream of civil rights law." There are a number of racial balance and racial isolation decisions, Libassi says, and "we have to look at them all and try to distill" their meaning to direct the enforcement effort.

Libassi has run into a formidable roadblock that may slow his Northern push. Last fall, near the end of HEW's desegregation survey of the 17 Southern and border states, the National Center for Educational Statistics was asked to run a desegregation "census" of the 33 other states. The center, run by Assistant Education Commissioner Alexander Mood, admitted to Libassi in July that after eight months it had come up with nothing. Mood blamed the states from which data had been asked. But the desegregation census had been a low-priority item; Mood's aides say that only a third of the states furnished data because he was "sensitive" about federal-state relations.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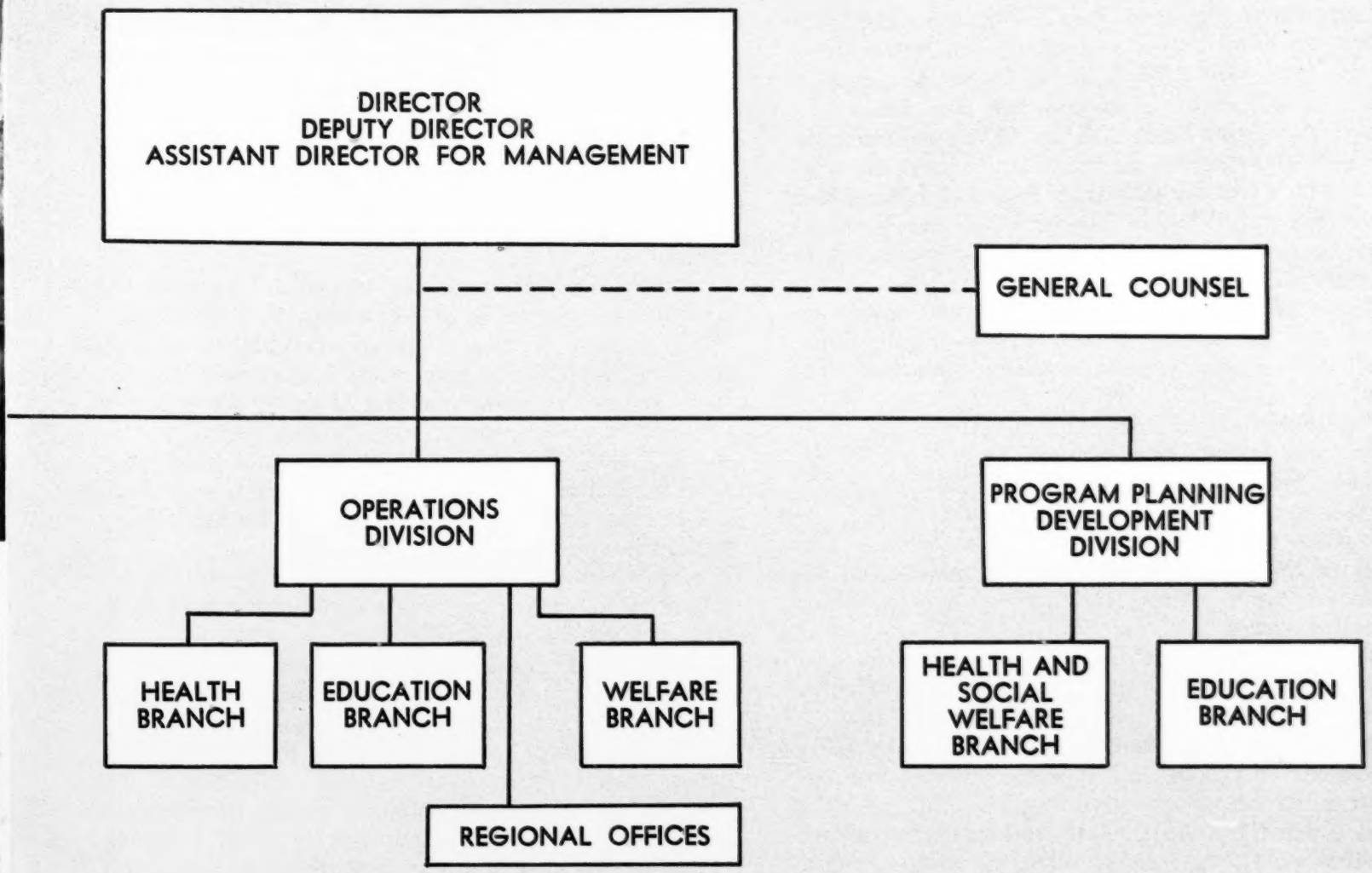
The cost of the "survey"—a contract for optical scanning had been let and the time of seven or eight federal employes was involved—did not arouse Libassi so much as the time it had taken. Libassi then ordered Mood to produce a "compliance reporting mechanism, NOT for research," forthwith.

"All I want is a rough device that screens out districts with *de jure* segregation problems," Libassi says. Mood is now supposed to be working on a sampling technique instead of a census. Libassi must have data before he can move on the urban North.

Libassi is proud of what he already has accomplished in the South. As soon as he was assigned the enforcement job, he resolved to bring up to date the compliance reporting procedures of the more than 1,400 Southern school districts operating under desegregation plans. The districts—1,341 plans had been accepted as of mid-July—are required to file data in the spring with HEW to report present and future desegregation prospects. One of the chief complaints of the districts a year ago was that "we don't know where we stand."

"Last year there was a lot of calculated uncertainty," says Libassi. "There were different state standards.



This year we're using fixed criteria. There's a great deal more uniformity of treatment. We want to be fair."

By July 3 of this year, every Southern district that had mailed in data last spring had been sent a letter reporting its desegregation status was in one of three conditions:

- It was "clean."
- It was in bad shape and an inspector was being sent during the summer to work out terms for improvement with the local officials.
- Its status was equivocal, and after school opens in the fall HEW might very well send in an inspector.

(Over the whole 17-state area there are 4,878 school districts, of which 3,179 have filed "assurances of compliance" with HEW, 1,476 have submitted desegregation plans and 223 are under federal court desegregation orders. Only 102 districts in all have had federal aid terminated and of those, 16 have complied with the law and had their funds restored.)

There is little indication, so far, that Libassi's administration over the long haul will be any less strict than was Seeley's. It is true that HEW did not unleash the 100 Northern law students upon Southern school districts this summer that it did in 1966. (One Seeley loyalist remarks that the embryo lawyers "made like Sherman" in the South.) But there now is a feeling among HEW officials that this was a mistake, anyway. Southerners were hired this year for summer inspection chores in the South.

An amendment introduced by Rep. L. H. Fountain (D-N.C.) and approved by the House the same day the Green Amendment passed might have serious effects, according to Libassi. The Fountain Amendment —also passed by the House last year and modified in a House-Senate conference committee—would prevent the government from "deferring" funds of new federal programs from a school district until HEW's case against the district was decided. "That means the district could delay and delay," says Libassi, "and HEW would have to continue approving new federal grants which, once spent, would be gone." Libassi adds that "each year this could do us potentially less harm," since there are few new federal education programs.

Generally, the more moderate Southern legislators are learning to live with the guidelines and HEW's attempts to enforce them. Typical Southern reaction to Libassi's administration of the guidelines came from Georgia State School Supt. Jack Nix this summer, after a meeting in Washington with Libassi and other HEW officials. "It appears that there will be no change in the enforcement," Nix said. "I fear that some people are being misled into believing that there will be some relaxing of federal efforts."

Congressmen like Rep. Jamie Whitten (D-Miss.) continue to think guideline enforcement is too stringent, despite the Fifth Circuit Court of Appeals opinion upholding the guidelines last Dec. 29.

Some civil rights leaders think HEW's enforcement is too soft, and this was an initial fear among many in Washington when the shift from Seeley to Libassi first became known. Whitney Young Jr. of the National Urban League took this tack publicly. The theory is that centralizing all civil rights enforcement in the secretary's office makes the program much more vulnerable to a "single bullet"—that is, to a single nullifying act of Congress, especially where funds are concerned.

In addition, Libassi's office theoretically is supposed to offer only "technical assistance" to civil rights enforcement officers in HEW's nine regional offices. No one takes that caveat too seriously here.

The more important problem, Libassi thinks, is the quality of the people he is hiring to operate the regional civil rights offices. His organizational structure is a kind of troika:

- One division, to be headed by Robert M. Nash, who has been Seeley's counterpart in the Public Health Service, will be concerned with "program planning" —that is, long-range plans and setting of priorities.
- A second division will handle "information resources." That means acquiring the kind of data Libassi needs for enforcement, and for disseminating information to the media and to Congress. Joshua Zatman, who had run Seeley's resources and materials center, is acting chief of the information division.
- A third division, without a chief as yet, simply is being called "operations" and will have about 85 per cent of the civil rights personnel. Eventually, two people in operations will be in the field, stationed at the nine regional offices, for every one in Washington.

The operations division, in turn, is being split into three branches, health, education and welfare. Each branch head has been picked and each is a lawyer. Dean W. Determan of Libassi's staff will handle health; Mrs. Ruby G. Martin, also a Libassi aide, will handle education; Louis Rives of the Vocational Rehabilitation Administration will handle welfare.

Still not finally resolved is whether or not Howe's office will keep all, some or none of the Title IV program under the Civil Rights Act. This is the program establishing "desegregation institutes" for teachers and offering "technical assistance" for Title VI enforcement officials. In May, it appeared all of Title IV would stay with Howe. Now, a proposal to keep the institutes under Howe's wing and to place the technical assistance under Libassi's wing has the greatest support within HEW.

First staffing will be done in HEWs three Southern regions, headquartered at Atlanta, Dallas and Charlottesville, Va. Chicago and New York probably will be the regional offices staffed next, followed finally by Boston, Kansas City, Denver and San Francisco.

Libassi worries over staffing, and considers it his toughest task. "We need good, experienced, able people who have the stomach to take this kind of job," he says. "They must be fair, objective, with a commitment to the Constitution. They must operate in a very impartial way. They must be able to endure constant criticism, too. You have to be satisfied with your own work, because no one else is ever happy with your efforts."

What other qualities does he seek in the paragons he intends to employ at $10,000 to $15,000 a year? "They have to be good investigators, good negotiators and diplomatic. They must relate well to people. They have to have an understanding of the predicament of the Negro parent who is faced with a grossly inadequate school for his child. At the same time, they must understand the problems the elected school superintendent faces, and must be able to apply basic legal principles."

Major compliance decisions will be up to the regional civil rights directors, Libassi says, "subject to review by Washington only."

Lower-level employes may "interchange" among school, health and welfare tasks in the field, but later will be expected to specialize. Libassi feels the government is "very fortunate to have its present dedicated, hard-working staffs" in civil rights. About 100 are in education, close to 90 in the Public Health Service and the rest scattered among other HEW agencies.

Morale has been spotty among the civil rights staffs since Gardner's May 10 announcement. Some employes feel the shift "won't make any difference." Others regard it as a near-catastrophe. Whether Libassi will be able to get the present veterans of civil rights enforcement to move permanently to the regional offices is questionable. But there has been above-normal turnover in the enforcement programs, anyway, and Libassi's main chore is to put his finger on the right people to head his regional offices. If regional civil rights chiefs can avoid being submerged by the HEW regional directors, they will have won half the battle, Libassi's aides feel.

This, of course, is why some civil rights leaders—and some on Seeley's staff—have had reservations about regionalization all along; it is difficult to work in the same organization with an over-all boss, yet make decisions independent of that boss. A lot of these problems boil down to individual personalities, obviously. For example, some of Libassi's aides think it will be harder to staff Dallas than Atlanta because of the differences between the regional HEW directors.

Libassi is optimistic. He looks out his fifth-floor window up Independence Avenue to the Capitol when he is asked about his new responsibilities. He takes off his shoes, grins boyishly and concedes that until May 10, "I didn't have to answer to Congress for my actions."

Now, he admits, he's on the spot. But he adds: "I wouldn't be here if I weren't carrying out the program." ○